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17 Attorneys for Defendants Council on American-Islamic Relations, Inc.,  
18 Council on American-Islamic Relations Action Network, Inc.,  
19 and Council on American-Islamic Relations of Santa Clara, Inc.

20 IN THE UNITED STATES DISTRICT COURT  
21  
22 THE NORTHERN DISTRICT OF CALIFORNIA  
23  
24 SAN FRANCISCO DIVISION

25 MICHAEL SAVAGE, ) Case No. CV07-06076 SI  
26 Plaintiff, )  
27 v. ) **DECLARATION OF THOMAS R.**  
28 COUNCIL ON AMERICAN-ISLAMIC ) **BURKE IN SUPPORT OF CAIR's**  
29 RELATIONS, INC., COUNCIL ON ) **MOTION FOR ATTORNEYS' FEES AND**  
30 AMERICAN ISLAMIC RELATIONS ACTION ) **COSTS**  
31 NETWORK, INC., COUNCIL ON AMERICAN ) Date: October 3, 2008  
32 ISLAMIC RELATIONS OF SANTA CLARA, ) Time: 9:00 a.m.  
33 INC., and DOES 3-100, ) Honorable Susan Illston  
34  
35 Defendants. ) Assigned to the Honorable Susan Illston

36 I, Thomas R. Burke, declare as follows:  
37  
38

1. I am an attorney and a partner with Davis Wright Tremaine LLP, and lead counsel  
 2 for Defendants Council on American-Islamic Relations, Inc., Council on American-Islamic  
 3 Relations Action Network, Inc., and Council on American-Islamic Relations of Santa Clara, Inc.,  
 4 collectively (collectively “CAIR”) in this action. I make these statements of my personal  
 5 knowledge and could competently testify to them if called as a witness.

6. After being retained by CAIR in December of 2007, my firm immediately began to  
 7 assist CAIR in evaluating Plaintiff’s Complaint and researching the available legal defenses. As  
 8 reflected in the contemporaneous time entries that were recorded for this matter, attached hereto as  
 9 Exhibit A, we analyzed Plaintiff’s Complaint (and later Amended Complaints) with the singular  
 10 goal of directing all our work toward preparing a motion that would ensure a summary dismissal of  
 11 this action. In addition, our firm met with representatives of the clients, worked with Nadhira Al-  
 12 Khalili, CAIR’s national legal counsel (located in Washington, D.C.), to prepare a detailed Answer  
 13 to Plaintiff’s Amended Complaint to accompany the Motion for Judgment on the Pleadings, and to  
 14 coordinate discrete tasks to be performed by CAIR employees and volunteers to cost-effectively  
 15 assist in the defense of this action.

16. I am lead counsel for CAIR in this action and have overall responsibility for CAIR’s  
 17 defense. My responsibilities included overall defense strategy, supervision of legal research,  
 18 communications with the clients and Ms. Al-Khalili, editing of the Motion and supporting  
 19 declarations, and arguing the Motion before the Court. In connection with this fees motion, I  
 20 reviewed and prepared my firm’s billing entries, coordinated strategy with our co-counsel (who  
 21 took the lead), prepared this declaration and helped to edit the Motion. To date, the total hours  
 22 billed by DWT personnel on this matter is 334.40 representing \$113,570.60 in total fees. Costs  
 23 incurred by DWT on behalf of CAIR total \$890 including \$75.00 in filing fees (to file a CD of the  
 24 audio excepts in dispute), and \$815 in disbursements for online legal research (billed at cost) and  
 25 hand-deliveries to the Court (required by the local rules). This fees request is based upon recorded  
 26 daily time entries for services actually performed in connection with this matter, multiplied by my  
 27 firm’s standard rates at the times that the services were performed. I personally reviewed these  
 28 entries individually and collectively. In several instances, the entries reflect time that was reduced

1 from what was actually incurred. Moreover, given the amorphous and “polemic” nature of  
 2 Plaintiff’s Complaint, much of counsel’s time was devoted generally to the defense of the litigation  
 3 as a whole, making it difficult to divide the hours expended on an individual claim-by-claim basis.

4. I was fortunate to also rely on several individuals within my firm to assist me.  
 5 Working under my supervision, Jeff Glasser performed the bulk of the legal research regarding the  
 6 RICO and First Amendment issues, conducting discrete research on fair use doctrine case law in  
 7 the Ninth Circuit and to draft the Motion for Judgment on the Pleadings. Mr. Glasser is an  
 8 associate in the firm’s Los Angeles office. He obtained his J.D. in 2007 from Boalt Hall and his  
 9 Bachelor’s degree from Yale University in 1996. Before law school, Mr. Glasser was a Senior  
 10 Editor and Midwest Bureau Chief for *U.S. News & World Report* and also a researcher and  
 11 collaborator with Bob Woodward for his best-selling book, “Shadow: Five Presidents & The  
 12 Legacy of Watergate.” Mr. Glasser’s biography is attached as Exhibit B. I also consulted with Eric  
 13 Stahl regarding key copyright issues in this case. Mr. Stahl is a partner in the firm’s Seattle office  
 14 who regularly advises clients throughout the country on copyright issues. Mr. Stahl has litigated  
 15 intellectual property disputes nationwide, including before federal trial courts, the Ninth Circuit,  
 16 and the U.S. Supreme Court. He received his J.D. from the University of Washington School of  
 17 Law in 1997, where he graduated first in his class and served as Executive Articles Editor of the  
 18 *Washington Law Review*. Mr. Stahl’s biography is attached as Exhibit C. I also briefly consulted  
 19 with my partner Bruce Johnson (\$445 per hour) (A.B., Harvard University (1972), B.A. Cambridge  
 20 University (1974), J.D. Yale University (1977), M.A. Cambridge University (1978)) on a  
 21 procedural question, and had assistance from Allan Patterson, an experienced paralegal based in  
 22 San Francisco (\$200.00 per hour) and our librarian in San Francisco, Jason Callan (\$165 per hour),  
 23 who helped to compile exhibits and information for the filings and hearing.

24. I earned my Bachelor’s degree, *magna cum laude*, from Arizona State University in  
 25 1984 and attended the University of San Francisco School of Law where I graduated, *magna cum*  
 26 *laude*, in 1989. While in law school, I was an extern law clerk for the Honorable U.S. District  
 27 Court Judge Marilyn Hall Patel of the Northern District of California. Since being admitted to the  
 28 California Bar in 1989, I have been in private practice in the Bay Area with a concentration on First

1 Amendment and media law matters. I regularly represent media clients including *The San*  
 2 *Francisco Examiner*, *The New York Times*, *The Bakersfield Californian*, McClatchy Company, *The*  
 3 *San Francisco Bay Guardian*, *The Sacramento News & Review*, CNN, CBS, NBC and others.  
 4 Since 2002, I am also a Lecturer at the Graduate School of Journalism, University of California,  
 5 Berkeley. I am listed in *Chambers USA: America's Leading Lawyers* for Media and Entertainment  
 6 Matters and named as one of the *Best Lawyers in America* in First Amendment Law by  
 7 Woodward/White, 2006. A copy of my biography is attached as Exhibit D.

8 6. My regular hourly rate in 2007 is \$450 per hour. Effective January 1, 2008, my rate  
 9 increased to \$475 per hour. However, I agreed to continue to bill my 2007 hourly rate due to the  
 10 financial constraints imposed on CAIR by this litigation. Mr. Glasser and Mr. Stahl's billing rates  
 11 are \$240 and \$360 respectively; their rates have remained the same for the duration of this matter. I  
 12 am a former member of my firm's Executive Committee and am a current member of the  
 13 committee of the firm that reviews all associate and contract attorneys of the firm. In this capacity,  
 14 I am personally familiar with information concerning the billing rates charged by attorneys in the  
 15 San Francisco Bay Area. I have carefully reviewed both the work performed and the hourly billing  
 16 rates charged by the defense attorneys representing CAIR in this litigation and believe the hourly  
 17 rates being sought are comparable to, if not less than, the hourly rates charged by other attorneys in  
 18 the San Francisco Bay Area with similar practices and expertise in these kinds of matters. Courts  
 19 have found DWT's rates to be reasonable in several recent cases. For example, in *Taus v. Loftus*,  
 20 40 Cal.4th 683 (2007), in connection with an anti-SLAPP Motion and subsequent appeals, on  
 21 remand, a portion of clients DWT represented were awarded \$240,000 in fees and costs (using rates  
 22 set by an insurer over a multiple-year period); in *Simpson Strong-Tie v. Gore*, Santa Clara County  
 23 Superior Court, Case No. 106CV-057666; (S164174) (Petition for Review granted by the  
 24 California Supreme Court on July 30, 2008 to address two non-fees related issues), in connection  
 25 with another anti-SLAPP Motion, DWT's client was awarded \$74,124.50 in fees and costs (using  
 26 2006 rates).

27 7. In addition to my law firm, CAIR was also represented by the Electronic Frontier  
 28 Foundation ("EFF"), who agreed to perform its legal services on a *pro bono* basis. From the

beginning and continuing through this motion, working with EFF Senior Counsel Matthew Zimmerman, we were able to avoid duplication by assignment of specific tasks. For example, our firm undertook to analyze the entire action, to review Plaintiff's extensive legal and factual allegations, to work with CAIR to prepare its detailed Answer, and to research and draft CAIR's RICO and First Amendment arguments. Mr. Zimmerman focused his attention on researching and drafting the fair use arguments, which were supplemented by selected copyright research and discrete drafting and editing performed by my firm. In connection with this fees motion, Mr. Zimmerman drafted the motion while our firm compiled its billing information and helped with strategic questions and editing. Throughout this lawsuit, tasks were not duplicated between Davis Wright Tremaine LLP and EFF and the division of work proved to be both economical and effective in light of the decision rendered by this Court.

12       8.       Attached as Exhibit E to this Declaration is an email that I received from Plaintiff's  
13 counsel, Daniel Horowitz on February 28, 2008, outlining the extensive discovery plan Mr.  
14 Horowitz proposed for this case.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is  
16 true and correct. Executed in San Francisco, California, on August 29, 2008.

/s/ Thomas R. Burke

Thomas R. Burke